IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14539 of 1993
With
SPECIAL CIVIL APPLICATION No. 14545 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HIRABHAI K CHAUHAN - Petitioner(s)
Versus
DISTRICT EDUCATION OFFICER & 2 - Respondent(s)

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Appearance :
MR SURESH M TRIVEDI for Petitioner(s) : 1,
Mr. Dipen Desai, AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 23/06/2006

ORAL COMMON JUDGMENT

As the dispute involved in these two petitions is between the same parties and common questions of law and facts arise in both these

petitions, they are being disposed of by this common judgment and order.

2. So far as the present Special Civil Application No. 14539 of 1993 is concerned, the petitioner, Managing Trustee of Shree Ashapuri Trust, which was running Uttar Buniyadi Vidyalaya at Bhamra in Lunawada Taluka, District-Panchmahals, has challenged the legality and validity of the order passed by the Director of Higher Education (Secondary), State of Gujarat, Gandhinagar, dated 10th July 1989 ordering grant-cut of 100% for the 1st year of grant and further imposing penalty of grant-cut of 5% (salary grant plus maintenance grant) and not granting approval of appointments of 2 teachers, namely Navnitkumar S. Patel and Kanubhai J. Rabari for the purpose of grant, confirmed by the State Government by its order dated 12th September 1990.

3. So far as Special Civil Application No. 14545 of 1993 is concerned, the petitioner has challenged the legality and validity of the order passed by the Deputy Secretary, Education Department, State of Gujarat, dated 13th April 1989 in partly modifying the order passed by the Director of Higher Education dated 31st November 1988 to the extent of approving appointment of one Shri V.S. Rathod, Clerk and Shri J.H. Chauhan for the purpose of grant only and confirming the order with regard to grant-cut of 100% for the first year and imposition of penalty of 5% grant-cut.

4. The petitioner Trust was granted recognition to start Uttar Buniyadi Vidyalaya in Village Bhamra in Lunawada Taluka in Panchmahals District where permission was granted to start one class of Standard 8th only and though permission was not granted for Standard 9th and 10th, the petitioner Trust started 9th and 10th

Standards without prior permission and appointed entire staff, i.e. Teaching and Non-teaching staff without obtaining N.O.C.; without inviting applications through public advertisement; and without following any procedure as required to be followed under the provisions of the Gujarat Secondary Education Act and Rules. Proceedings were initiated by the Director of Higher Education for considering appointments of those staff whose appointments were irregular and for grant-cut. Show cause notices were issued and thereafter impugned orders came to be passed by holding that appointments were made without prior approval, without NOC, without inviting any application, and without following any procedure as required and all those appointments were irregular. However, considering the policy of the State Government, the appointments made prior to 18.8.1996 were regularized for the purpose of Grant. However, those appointments which were made after 18.8.1996 which were irregular were

disapproved and considering irregularities stated hereinabove imposed grant-cut to the extent of 100% for 1st year and, by way of penalty, imposed grant-cut of 5% (Salary Grant plus Maintenance Grant). Being aggrieved and dissatisfied with the aforesaid orders passed by the Joint Director of Higher Education, the petitioners preferred appeal before the State Government. So far as Special Civil Application No. 14539 of 1993 is concerned, the order came to be confirmed, and so far as Special Civil Application No. 14545 of 1993 is concerned, it was modified to the extent stated hereinabove. Being aggrieved and dissatisfied with the aforesaid orders, the petitioners have preferred the present two Special Civil Applications under Article 226/227 of the Constitution of India.

5. The only submission made on behalf of the petitioners is that, looking to the urgency and in the interest of students the appointments were

made. It is also further submitted that the petitioner Trust is running the Institution in the backward area and therefore grant-cut to the extent of 100% for the 1st year and 5% for the next year would be too harsh. No other submission has been made.

6. Shri Dipen Desai, learned AGP, while supporting the aforesaid orders, has submitted that looking to the charges proved, all the appointments made were dehors the Act, and Rules and without prior approval, without obtaining NOC, without inviting applications through public advertisement and even Standars 9th and 10th were started without prior permission and therefore the authority is justified in passing the order of grant-cut. He has requested to dismiss both the Special Civil Applications.

7. It is not in dispute that the petitioner Trust was granted permission to run Uttar

Buniyadi Vidyalaya for one class of Standard 8th only. The petitioner started Standards 9th and 10th without prior permission. Not only that, but entire Teaching and Non-teaching staff were appointed without NOC, without any prior approval, without inviting any application by giving public advertisement and dehors the rules and regulations of the Act, and considering the same if the order is passed of grant-cut to the extent of 100% for the first year and 5% by way of penalty for the next year, it cannot be said that the same is in any way illegal and/or erroneous and/or arbitrary. The orders are passed after giving fullest opportunity to the petitioner, and considering the reply to the show cause notice. Therefore, the principles of natural justice have been followed. Under the guise of students's interest, the irregular appoints of the teachers cannot be regularised. Merely because a Trust is running an Institution in a backward area, that cannot be the ground to

form the basis of not to impose any penalty and/or grant-cut. Considering the irregularities, the authority is justified in passing the order of grant-cut and disapproved the irregular appointments made after 1986 and no illegality has been committed by the authority. Hence, both the petitions are required to be dismissed.

8. For the reasons stated above, both the petitions fail. Rule is discharged. Ad-interim relief, if any, stands vacated forthwith.

[M.R. Shah, J.]

RMR.